

TITLE 4. BUSINESS REGULATIONS

NOTICE OF PROPOSED RULEMAKING

Pursuant to Section 44520(b) of the Health and Safety Code, the regulations being adopted herewith by the California Pollution Control Financing Authority (the “Authority”) are, by legislative mandate, necessary for the implementation of small businesses assistance and the immediate preservation of the public peace, health and safety, and general welfare.

Proposed Regulatory Action

The Authority proposed to adopt and extend Section 8035.5 of Title 4 of the California Code of Regulations (the “Regulations”) concerning the administration of the California Pollution Control Financing Authority’s Bond Program. These Adopted Regulations are necessary to implement, interpret and make specific Articles 3 and 4 of the California Pollution Control Financing Authority Act (the “Act”).

Authority and Reference

Authority: Sections 44520(a) and 44520(b), Health and Safety Code. Section 44520(b) of the Act authorizes the Authority to adopt regulations relating to small business financing as emergency regulations and instructs the Office of Administrative Law to consider such regulations to be “necessary for the immediate preservation of the public peace, health and safety or general welfare.” Section 44520(a) of the Act authorizes the Authority to adopt necessary regulations to carry out its powers and duties under this division in administering applications for financing.

Reference: Section 44548(a)(1)(A), Health and Safety Code. These adopted regulations implement, interpret, and make specific Sections of the Act by adopting and extending Section 8035.5 of Title 4, Division 11, Article 3 of the California Code of Regulations.

Informative Digest/Policy Statement Overview

Existing law establishes the Authority to implement small business financing assistance programs pursuant to Section 44520(b) of the Health and Safety Code.

The proposed adoption extends a section to the existing regulations. The primary driver of these changes is to incent California companies to accelerate equipment investments by offering an Equipment Only Bond Financing Program to encourage companies to issue bonds through CPCFA instead of using conventional bank loans. The program will allow for lower costs of issuance fees to applicants making it more cost-effective to take advantage of the savings obtained by issuing tax-exempt bonds with a lower interest rate.

The proposed adoption to the current regulations will not have a significant effect on the creation or elimination of jobs in California, significantly affect the creation of new businesses or

elimination of existing businesses within California, or significantly affect the expansion of business currently doing business within California.

The proposed amendments to the CPCFA Regulations are consistent and compatible with the existing state statute and regulations, and the objective is as follows:

Section 8035.5(a). *Adoption of this regulation section using identical language as expired section 8035.5.*

The Authority hereby establishes the Equipment Only Bond Financing Program to encourage bond financing for small businesses to meet their equipment purchasing needs.

In order to participate in the program, applicants must make the following covenants when they submit their request for financing:

- (1) Bonds must have a final maturity of 12 years or less.
- (2) At least 90% of the net project fund of the proposed bond issue must be used to finance equipment, rolling stock and the like with expected economic lives of no more than 10 years. No real estate, improvements thereto, buildings or the like are eligible.
- (3) Bond counsel and disclosure counsel fees are limited to \$45,000 collectively.
- (4) Applicant's financing consultant fees are limited to 0.5% of par.
- (5) Applicant's underwriter fees are limited to 0.7% of par.
- (6) Applicant's counsel and co-counsel fees are limited to \$12,500 collectively.

Section 8035.5(b). *Adoption of this regulation section using identical language as expired section 8035.5.*

The Authority will waive the fee as defined in §8035(a).

Section 8035.5(c). *Adoption of this regulation section using identical language as expired section 8035.5.*

No more than \$20 million of bonds may be issued per borrower under this program.

Section 8035.5(d). *Extension of the Equipment Only Bond Financing Program.*

The program will expire on December 31, 2014.

Disclosure Regarding the Proposed Action

The Executive Director of the Authority has made the following determinations regarding the effect of the Adopted Regulations:

Mandate on local agencies or school districts: None.

Cost or savings to any state agency: None.

Cost to any local agency or school district that must be reimbursed in accordance with Government Code sections 17500–17630: None.

Other non–discretionary cost or savings imposed on local agencies: None

Cost or savings in federal funding to the state: None.

Significant effect on housing costs: None.

Cost impact on a representative private person or business: The Authority is not aware of any cost impacts that a representative, private person, or business would necessarily incur with reasonable compliance with the proposed action.

Small Business: The Adopted Regulations will not have an adverse impact on small business in California and will not affect small business since they do not impose additional restrictions or cost on small business.

Significant, statewide, adverse economic impact directly affecting businesses including the ability of California businesses to compete with businesses in other states: The Authority has made an initial determination that the Adopted Regulations will not have a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

Results of the Economic Impact Analysis

Assessment regarding effect on jobs/businesses: The Adopted Regulations will not have a significant effect on the creation or elimination of jobs in California, significantly affect the creation of new businesses or elimination of existing businesses within California, or significantly affect the expansion of businesses currently doing business in California.

Benefits of the health and welfare of California residents, worker safety, and the state's environment: Please see benefit discussion under Informative Digest/Policy Statement Overview, page 1.

Consideration of Alternatives

In accordance with Government Code Section 11346.5(a)(13) the Authority must determine that no reasonable alternative to the Adopted Regulations considered by the Authority or that have otherwise been identified and brought to the attention of the Authority would be more effective in carrying out the purpose for which the Adopted Regulations are proposed or would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

The Authority invites interested parties to present statements with respect to alternatives to the Adopted Regulations during the written comment period.

Agency Contact Person

Written comments, inquiries and any questions regarding the substance of the Adopted Regulations shall be submitted or directed to:

Andrea Gonzalez, Staff Services Analyst
California Pollution Control Financing Authority
915 Capitol Mall, Room 444
Sacramento, CA 95814
Telephone: (916) 651-7284
Fax: (916) 657-4821
Email: agonzalez@treasurer.ca.gov

Or:

Deanna Hamelin, Associate Treasury Program Officer
California Pollution Control Financing Authority
915 Capitol Mall, Room 445
Sacramento, CA 95814
Telephone: (916) 657-4337
Fax: (916) 657-4821
Email: Deanna.Hamelin@treasurer.ca.gov

Written Comment Period

Any interested person, or his or her authorized representative, may submit written comments relevant to the Adopted Regulations to the Authority. The written comment period on the Adopted Regulations ends at **5:00 p.m. on July 15, 2013**. All the comments must be submitted in writing to the Agency Contact Person identified in the Notice by that time in order for them to be considered by the Authority.

In the event that substantial changes are made during the written comment period, the Authority will also accept additional written comments limited to any changed or modified regulations for fifteen (15) calendar days after the date on which such regulations, as changed or modified are made available to the public pursuant to Title 1, Chapter 1, Section 44 of the California Code of Regulations. Such additional written comments should be addressed to the Agency contact person identified in this Notice.

Availability of Initial Statement of Reasons And Text of Proposed Regulations

The Authority has established a rulemaking file for this regulatory action, which contains those items required by law. The file is available for inspection at the Authority's office at 915 Capitol Mall, Room 457, Sacramento, California 95814, during normal business working hours. As of the date this Notice is published in the Notice Register, the rulemaking file consists of this notice, the Initial Statement of Reasons and the proposed text of the Adopted Regulations. Copies of these items are available upon request from the Agency Contact Person designated in this Notice or at the Authority's website located at <http://www.treasurer.ca.gov/cpcfai/index.asp>

Public Hearing

A request for a public hearing may be made by written request to the Agency Contact Person no later than 15 days prior to the close of the written comment period.

Availability of Changed or Modified Text

After the written comment period ends and following a public hearing, if any is requested pursuant to Section 11346.8 of the Government Code, the Authority may adopt the Adopted Regulations substantially as described in this Notice, without further notice. If the Authority makes modifications that are sufficiently related to the originally proposed text, it will make the modified text (with changes clearly indicated) available to the public for at least fifteen (15) calendar days before the Authority adopts the proposed Adopted Regulations, as modified. Inquiries about and requests for copies of any changed or modified regulations should be addressed to the Agency Contact Person identified in this Notice. The Authority will accept written comments on the modified regulations for fifteen (15) calendar days after the date on which they are made available.

Availability of Final Statement of Reasons

Upon completion, a copy of the Final Statement of Reasons may be requested from the Agency Contact Person designated in this Notice or found at the Authority's website at <http://www.treasurer.ca.gov/cpcfa/index.asp>

INITIAL STATEMENT OF REASONS

CALIFORNIA POLLUTION CONTROL FINANCING AUTHORITY

Title 4, Division 11, Article 3

Introduction

Pursuant to Section 44520(b) of the Health and Safety Code, the regulations being adopted herewith by the California Pollution Control Financing Authority (the “Authority”) amended regulations (the “Amended Regulations”) that are, by legislative mandate, necessary for the implementation of small businesses assistance and the immediate preservation of the public peace, health and safety, and general welfare.

Section 44520(a) of California Pollution Control Financing Authority Act (“the Act”) authorizes the Authority to adopt necessary regulations to carry out its powers and duties under this division in administering applications for financing.

The proposed adoption extends a section in the existing regulations. The primary driver of this adoption is to incent California companies to accelerate equipment investments by continuing to offer an Equipment Only Bond Financing Program to encourage companies to issue bonds through CPCFA instead of using a conventional bank loan.

Necessity

For equipment only financing, the useful life of the equipment is approximately 7 to 10 years. Since interest rates have remained at historically low levels, the spread between tax-exempt rates and conventional, LIBOR based rates has been very small, or non-existent. With this program, applicants will have the chance to obtain financing using tax-exempt bonds that is initially at/or about the same cost that they would incur if they borrowed conventionally; however, they would potentially save substantial sums as interest rates rise over time and the more traditional tax-exempt conventional spreads reoccur. Currently, the typical costs of issuance for these transactions are too high to justify any savings that may be obtained from a lower tax-exempt interest rate.

CPCFA has recently discussed this program with interested parties and stakeholders. These parties which are typically involved in tax-exempt bond financing have agreed to accept the fee reduction for services under the Equipment Only Bond Financing Program. For example, Bond Counsel fees will be capped at \$45,000. Under the Equipment Only Bond Financing Program, applicants will certify that the financing team has agreed upon the fee structure when an application is submitted.

This adoption is the result of periodic evaluation of the regulations and issues encountered during specific bond financing transactions.

Section Analysis

The proposed objective is as follows:

Section 8035.5. Adoption of the Equipment Only Bond Financing Program. This program will continue to encourage applicants, especially small businesses, to issue bonds through CPCFA instead of using more expensive loan products. The program will continue providing lower costs of issuance fees to applicants making it more cost-effective to take advantage of the savings obtained by issuing tax-exempt bonds with a lower interest rate.

Reliance

These amendments are the result of periodic evaluation of the regulations and feedback from applicants.

Alternatives Considered

The CPCFA Executive Director has determined that no alternatives are more effective, or as effective and less burdensome to affect persons or small businesses, than the proposed Adopted Regulations.

Mandated Technology or Equipment

The CPCFA Executive Director has determined the revisions do not mandate the use of specific technologies or equipment.

Economic Impact Statement

The CPCFA Executive Director has determined that the revisions will have no significant adverse economic impact on small businesses, other businesses directly affected, or private persons. Furthermore, the CPCFA Executive Director has determined that the adopted regulations do not impose any additional cost or savings requiring reimbursement under Section 17500 et al of the Government Code, any other non-discretionary cost or savings to any local agency or any cost or savings in federal funding to the State. Pursuant to the State Administrative Manual Section 6680, a Fiscal Impact Statement (Form 399) is submitted without the signature of a Project Budget Manager at the Department of Finance, as there are no fiscal impact disclosures required by State Administrative Manual Sections 6600-6670. There will be no cost or savings to any other State Agency pursuant to Section 11346.1(b) or 11346.5(a)(b) Governmental Code.

The creation or elimination of jobs within California: The adoption and extension of Section 8035.5 of the CPCFA Regulations are not expected to have a direct impact on the creation or elimination of jobs within the State of California.

The creation of new businesses or the elimination of existing businesses within the State of California: The proposed adoption and extension of Section 8035.5 of the CPCFA Regulations

are not expected to have a direct impact on the creating of new businesses or the elimination of existing businesses within the State of California.

The expansion of businesses currently doing business within the State of California:

The adoption to Section 8035.5 of the CPCFA Regulations is not expected to have a direct impact on the expansion of businesses currently doing business within the State of California.

The benefits of the regulation to the health and welfare of California residents, worker safety, and the state's environment: These regulations will allow for lower costs of issuance fees to applicants utilizing the Equipment Only Bond Financing Program, which makes this method of financing more cost-effective, to take advantage of the savings obtained by issuing tax-exempt bonds with a lower interest rate.

PROPOSED TEXT OF REGULATIONS

Title 4. Business Regulations

Division 11. California Pollution Control Financing Authority

Article 3. General Provisions Relating to Authority Actions

§ 8035.5 Equipment Only Bond Financing Program.

- (a) The Authority hereby establishes the Equipment Only Bond Financing Program to encourage bond financing for small businesses to meet their equipment purchasing needs.

In order to participate in the program, applicants must make the following covenants when they submit their request for financing:

- (1) Bonds must have a final maturity of 12 years or less.
- (2) At least 90% of the net project fund of the proposed bond issue must be used to finance equipment, rolling stock and the like with expected economic lives of no more than 10 years. No real estate, improvements thereto, buildings or the like are eligible.
- (3) Bond counsel and disclosure counsel fees are limited to \$45,000 collectively.
- (4) Applicant's financing consultant fees are limited to 0.5% of par.
- (5) Applicant's underwriter fees are limited to 0.7% of par.
- (6) Applicant's counsel and co-counsel fees are limited to \$12,500 collectively.

- (b) The Authority will waive the fee as defined in §8035(a).

- (c) No more than \$20 million of bonds may be issued per borrower under this program.

- (d) The program will expire on December 31, 2014.

NOTE: Authority cited: Section 44520, Health and Safety Code.

Reference: Section 44548, Health and Safety Code.